

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TERWIN LEMAR BROWN,)
)
Petitioner, pro se,)
v.)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

1:09CV844
1:07CR122-1

ORDER

On November 7, 2008, Petitioner filed a pro se "Motion for Discovery" (Doc. 22, 1:07CR122-1). Judgment had previously been entered on April 3, 2008, (Doc. 15, 1:07CR122-1), and Petitioner appealed. The United States Court of Appeals affirmed the Judgment, and that court's Judgment was filed on December 15, 2008. (Doc. 24, 1:07CR122-1.) Petitioner has not presented any authority, in law or fact, which would authorize his requested relief. Accordingly, after careful review, this court finds that Petitioner's "Motion for Discovery" (Doc. 22, 1:07CR122-1) should be denied.

Subsequently, Petitioner filed a petition pursuant to 28 U.S.C. § 2255. (Doc. 26, 1:07CR122-1; 1:09CV844.) The Magistrate Judge recommended dismissal of that petition because the motion was not filed on the proper forms. (Doc. 29, 1:07CR122-1.) This court adopted the recommendation without objection, (Doc. 42, 1:07CR122-1) but did not dismiss the action because Petitioner

filed a corrected motion on proper forms, (see Doc. 33, 1:07CR122-1). This court's order adopting the recommendation (Doc. 42, 1:07CR122-1) is therefore improperly entitled as a "Judgment" rather than an order. That document, to clarify the record, should be amended to reflect that it is an "Order" rather than a "Judgment."

Petitioner's original petition pursuant to 28 U.S.C. § 2255 (Doc. 26, 1:07CR122-1; 1:09CV844) is still shown as pending in the records of this case. That petition (id.) should be dismissed without prejudice in view of Petitioner's corrected motion pursuant to 28 U.S.C. § 2255 (Doc. 33, 1:07CR122-1; 1:10CV59).

IT IS THEREFORE ORDERED that Petitioner's "Motion for Discovery" (Doc. 22, 1:07CR122-1) is **DENIED**.

IT IS FURTHER ORDERED that Document 42 in 1:07CR122-1, presently entitled "Judgment," is **AMENDED** to be entitled "Order."

IT IS FURTHER ORDERED that Petitioner's "Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. 2255" (Doc. 26, 1:07CR122-1; 1:09CV844) is **DISMISSED WITHOUT PREJUDICE**.

This the 17th day of December 2010.

William L. Osten, Jr.
United States District Judge